REMARKS

A total of 15 claims remain in the present application. The arguments are presented in response to the Office Action mailed November 15, 2007, wherefore reconsideration of this application is requested.

Referring now to the text of the Office Action, claims 1-15 stand rejected under 35 U.S.C. § 102(e), as being unpatentable over the teaching of United States Patent No. 6,747,986 (Chares et al.).

It is believed that the rejection of claims in view of Chares et al. is fully traversed by way of the Applicant's comments filed August 27, 2007 and further in view of the following discussion.

Response to Arguments

At section 4 of the Detailed Action, the Examiner refers to Applicants arguments that Charas et al are silent with respect to the transport or control of traffic with the network 118, and asserts that this "argument does not pertain to claims as presented". With respect, this position is not understood.

The specific argument being referred to by the Examiner, describes Applicant's position that Charas et al is directed to a radio link in an access network, rather than the transport network of the present invention. Applicant's comment that "Charas et al are otherwise silent with respect to the transport or control of traffic within the networks 118" also serves to emphasize this point. Applicant further believes that this position is intimately and directly pertinent to the claims as presented.

In particular, the claims as presented are explicitly directed to "a method of controlling a multi-layer transport network, which method includes determining whether a connection supporting a performance requirement of a call can be established within a first layer of the network; and if the connection cannot be established, defining an association between the call and a second call instantiated within a respective second layer of the network." The person of

ordinary skill in the art will recognise that such a method is intimately related to "the transport or control of traffic within the network".

At Section 5 of the Detailed Action, the Examiner states that "the recitation 'multilayer transport network' has not been given patentable weight because the recitation occurs in the preamble." Applicant respectfully submits that this position is improper.

"Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation. See, e.g., *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) [MPEP 2111.02(I)]. In the present case, the recitation "multi-layer transport network" clearly limits the structure of the claimed invention. Indeed, the recitation "multi-layer transport network" is the only structural limitation in claim 1. As such, it must be treated as a claim limitation, and therefore must be accorded appropriate weight.

Furthermore, Applicant contends that the recitation "multi-layer transport network" defines the context of the claimed method, so that it is not possible to determine the "broadest reasonable interpretation of the claims without considering the limiting effect of the recitation "multi-layer transport network".

Page 7, 1st paragraph of the Detailed Action states that "The Examiner has given the broadest interpretation of claim terms as presented". Applicant respectfully submits that this position is improper.

"During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification." [MPEP 2111, underlining added] While there must properly be some latitude in determining what is the "broadest reasonable interpretation", MPEP 2111 explicitly prohibits any interpretation that is clearly not consistent with the specification. In the present case, the specification explicitly refers to the G.805 transport network model, and in particular the G.8080, TMF608 and TMF814 standards. Applicant respectfully submits that the "broadest reasonable interpretation" of the claim terms

"consistent with the specification." must necessarily be consistent with these standards, as set out in Applicant's response filed August 27, 2007.

In light of the foregoing, it is respectfully submitted that the presently claimed invention is clearly distinguishable over the teaching of the cited references, taken alone or in any combination. Thus it is believed that the present application is in condition for allowance, and early action in that respect is courteously solicited.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this response, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 16-0820, Order No. SOR-36173.

Respectfully submitted,

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